

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	17 February 2015	Unclassified	LSC 66/145	

Report of : David Tolley Head of Consumer and Business Relations	Title: Licensing Act 2003 Application for a new Premises Licence for The Horn of Plenty – 36 Globe Road, London, E1 4DU
Originating Officer: Andrew Heron Licensing Officer	Ward affected: Bethnal Green

1.0 Summary

Applicant: **East London Leisure Ltd.**
Name and Address of Premises: **The Horn of Plenty**
36 Globe Road
London
E1 4DU

Licence sought: **Licensing Act 2003 variation**
The Sale of Alcohol
Regulated Entertainment
Late Night Refreshment

Objectors: **Local Residents**
Councillors

2.0 Recommendations

2.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File Only

Andrew Heron
020 7364 2665

3.0 **Background**

3.1 This is an application for a new premises licence for The Horn of Plenty – 36 Globe Road, London, E1 4DU.

3.2 A licence was in place at the premises previously. The licence was surrendered on 31st July 2014. A copy of the previous licence is enclosed as **Appendix 1** for information for members only.

The hours listed in the previous licence were as follows:

The sale of alcohol

- Monday to Thursday from 11:00hrs to 23:00hrs
- Friday and Saturday from 11:00hrs to 01:00hrs
- Sunday from 12:00hrs to 23:00hrs

- New Year's Eve from the end of permitted hours to start of permitted hours on New Year's Day

Late Night Refreshment

- Friday and Saturday from 23:00hrs to 01:00hrs

Regulated Entertainment (Live and Recorded music)

- Friday and Saturday from 11:00hrs to 01:00hrs
- Sunday from 12:00hrs to 23:00hrs

- Recorded Music only: New Year's Eve from the end of permitted hours to start of permitted hours on New Year's Day.

The opening hours of the premises

- Monday to Thursday from 11:00hrs to 23:30hrs
- Friday and Saturday from 11:00hrs to 01:30hrs
- Sunday from 12:00hrs to 23:30hrs

- New Year's Eve from the end of permitted hours to start of permitted hours on New Year's Day

3.3 A copy of the new application is enclosed as **Appendix 2**.

3.4 The applicant has described the nature of the application as:

- The Supply of Alcohol
- The Provision of Late Night Refreshment
- The Provision of Regulated Entertainment in the form of Films, Indoor Sporting Event, Live and Recorded Music

3.5 The hours that have been applied for are as follows:-

The sale of alcohol (both on and off sales)

- Sunday to Wednesday from 11:00hrs to 20:00hrs (midnight)
- Thursday to Saturday from 11:00hrs to 01:00hrs (the following day)

To include all bank holidays, Christmas Eve, Boxing Day and New Year's Day.

From the start of standard timing on New Year's Eve to the start of standard timing on New Year's Day

Late Night Refreshment (indoors)

- Sunday to Thursday from 23:00hrs to 00:00hrs (midnight)
- Thursday to Saturday from 23:00hrs to 01:00hrs (the following day)

(Members should note that the applicant has written Late Night Refreshment to commence at 22:00hrs in the application, however, under the Licensing Act 2003, this does not commence until 23:00hrs)

Regulated Entertainment (Films (indoors))

- Monday to Sunday from 14:00hrs to 23:00hrs

To include all bank holidays, Christmas Eve, Boxing Day and New Year's Day.

From the start of standard timing on New Year's Eve to the start of standard timing on New Year's Day

Regulated Entertainment (Indoor Sporting Events)

- Monday to Sunday from 12:00hrs to 23:00hrs

To include all bank holidays, Christmas Eve, Boxing Day and New Year's Day.

From the start of standard timing on New Year's Eve to the start of standard timing on New Year's Day

Regulated Entertainment (Live Music (indoors))

- Monday to Sunday from 13:00hrs to 22:00hrs

To include all bank holidays, Christmas Eve, Boxing Day and New Year's Day.

From the start of standard timing on New Year's Eve to the start of standard timing on New Year's Day

Regulated Entertainment (Recorded Music (indoors))

- Sunday to Wednesday from 11:00hrs to 00:00hrs (midnight)

- Thursday to Saturday from 11:00hrs to 01:00hrs (the following day)

There are further non-standard times in that the applicant has included the following sentences in some sections as above:

“To include all bank holidays, Christmas Eve, Boxing Day and New Year’s Day.

From the start of standard timing on New Year’s Eve to the start of standard timing on New Year’s Day”

3.6 Maps showing the relevant premises are included as **Appendix 3**.

4.0 **Licensing Policy and Government Advice**

- 4.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The revised policy came into effect on 1st November 2013.
- 4.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.
- 4.3 The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government’s website, www.homeoffice.gov.uk. It was last revised in October 2014.
- 4.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, that in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government’s advice, or has developed it further.

5.0 **Representations**

- 5.1 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing
- 5.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 5.3 All representations must be “about the likely effect of the grant of the premises licence on the promotion of the licensing objectives.” Likely means something that will probably happen, i.e. on balance more likely than not.

- 5.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 5.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 5.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 4**.
- 5.7 All the representations in this report have been considered by the relevant officer (Trading Standards and Licensing Manager) and determined to have met the requirements of the Licensing Act 2003.
- 5.8 The applicant has consulted with the Metropolitan Police and Environmental Health. **Appendix 5** shows an email exchange between The Police and the applicant in which it is accepted to amend the hours and to add additional conditions to the Operating Schedule. The application has therefore been amended to include the following:

Replacement Hours:

The Supply of Alcohol:

- Sunday to Wednesday from 11:00hrs to 23:30hrs
- Thursday to Saturday from 11:00hrs to 00:00hrs (midnight)

The Provision of Regulated Entertainment in the form of Live Music

- Monday to Sunday from 13:00hrs to 22:00hrs

The Provision of Regulated Entertainment in the form of Live Music

- Sunday to Thursday from 11:00hrs to 23:00hrs
- Friday to Saturday from 11:00hrs to 00:00hrs (midnight)

The Provision of Late Night Refreshment

- Monday to Sunday from 23:00hrs to 23:30hrs

The Opening Hours of the Premises

- Sunday to Wednesday from 11:00hrs to 00:00hrs (midnight)
- Thursday to Sunday from 11:00hrs to 00:30hrs (the following day)
- No amendments with Films
- The Removal of Indoor Sporting Events from the application as it is unnecessary
- All non-standard times to be withdrawn

Additional Conditions:

1. CCTV - Install and maintain CCTV. The CCTV system shall incorporate a recording facility and any recordings shall be retained and stored in a suitable and secure manner for a minimum of 31 days. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will comply with other essential legislation and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. There must also be someone on the premises who can download the images and present them on request by a police officer or other responsible authority. One camera be placed at the entrance and on entry;
2. Use of an incident refusals book;
3. Live and recorded music to be restricted to indoors only;
4. No drinking outside the premises and signage also to indicate that no drinking is allowed outside;
5. No more than 10 people smoking outside

5.9 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:

- Local Residents:
 - Adam Holmes-Davies and Anne Appelbaum
 - Jane Marlow, Louise Underwood and Andrea Giacomazzi
- LBTH Councillors:
 - Cllr Amy Whitelock Gibbs & Cllr Sirajul Islam

See Appendices 6-8

5.10 All of the responsible authorities have been consulted about this application. They are as follows:

- The Licensing Authority
- The Metropolitan Police
- The LFEPA (the London Fire and Emergency Planning Authority).
- Planning
- Health and Safety
- Noise (Environmental Health)
- Trading Standards
- Child Protection
- Primary Care Trust

5.11 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only objections that relate to the following licensing objectives are relevant:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

5.12 The objections cover allegations of

- Anti-social behaviour on the premises
- Anti-social behaviour from patrons leaving the premises
- Noise while the premise is in use
- Disturbance from patrons leaving the premises on foot
- Disturbance from patrons leaving the premises by car
- Close proximity to residential properties
- Hours the premises is in use

5.13 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

5.14 The applicant has offered measures in the operating schedule of the application that address the promotion of the Licensing Objectives. If there were no representations, the Licensing Authority would grant the licence, with conditions consistent with the operating schedule, which are relevant, proportionate and enforceable. Members are asked to consider the schedule and incorporate any conditions as necessary to address the licensing objectives.

6.0 Licensing Officer Comments

6.1 The following is intended to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice. Members may depart from the Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

6.2 Guidance issued under section 182 of the Licensing Act 2003

- ❖ As stated in the guidance it is “provided for licensing authorities carrying out their functions.” It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality (1.7).
- ❖ Also “so long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so.” When doing so licensing authorities will need to give full reasons for their actions (1.9).
- ❖ Also Members should note “A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such

a decision in the interests of the promotion of the licensing objectives.” (1.12)

- ❖ Conditions may not be imposed for the purpose other than the licensing objectives.
 - ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.7).
 - ❖ The Licensing Authority may only impose such conditions as are necessary for meeting the licensing objectives.
 - ❖ It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment. (S. 10.24).
 - ❖ The Government has stated “there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.20)
 - ❖ Mandatory conditions must be imposed (10.43) and censorship avoided (10.31).
 - ❖ Routine conditions about drink promotions are not permitted but can be imposed in appropriate circumstances (10.38). The Office of Fair Trading’s Advice also needs to be considered, namely that minimum prices setting is not permitted.
- 6.3 The Licensing Act 2003 permits children of any age to be on the premises which primarily sell alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.
- 6.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 6.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 6.6 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence

holder and their staff and standardised conditions should be avoided where they cannot be shown to be appropriate. (1.16/1.17)

6.7 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

6.8 In **Appendices 9-12** Members are given general advice, and also have explanations of the Council's Licensing Policy, Government advice and other legislation relating to the matters previously identified.

7.0 Exemptions

7.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.

7.2 Schedule 1 Part 2 of the Act states that entertainment in churches, Morris dancing (and accompanying music if live and unamplified) and incidental music are not licensable activities-that is no conditions can be set for them.

7.3 Acts of religious worship, wherever performed are not licensable.

7.4 Section 177, (1) and (2) of the Act provides that where a premises (or club) is licensed for alcohol consumption on the premises and is primarily thus used, and the permitted capacity does not exceed 200, additional conditions relating to the music should only relate to public safety or the prevention of crime (or both). That is they should not relate to any "noise nuisance."

7.5 Section 177 (4) provides that where a premises licence (or club) has a capacity of not more than 200 and the only music is unamplified live music between 08:00hrs and midnight, no additional conditions should be set relating to the music.

7.6 Section 177 can be disapplied on a licence review if it is proportionate to do so.

8.0 Legal Comments

8.1 The Council's legal officer will give advice at the hearing.

9.0 Finance Comments

9.1 There are no financial implications in this report.

10.0 Appendices

Appendix 1	A copy the previous licence
Appendix 2	A copy of the application
Appendix 3	Maps of the area
Appendix 4	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 5	Email exchange between PC Cruickshank and the applicant in relation to conditions on the licence
Appendix 6	Representations of Local residents Adam Holmes-Davies and Anne Appelbaum
Appendix 7	Representations of Local residents Jane Marlow, Louise Underwood and Andrea Giacomazzi
Appendix 8	Representations of Councillors Amy Whitelock Gibbs & Sirajul Islam
Appendix 9	Licensing Officer comments on Noise While the Premise is in Use
Appendix 10	Licensing Officer comments on Noise Leakage from the Premises
Appendix 11	Licensing Officer comments on Access and Egress Problems
Appendix 12	Licensing Officer comments on Licensing Policy Relating to Hours of Trading